

been declared an insolvent
in competition, by the Court of Insolvency
of County of Franklin.

ETC. **KARA C. BRETT, Assignee.**

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TEA WHITE'S. 14 and 15 Central St., Bangor.
Aug 12

<p> follows the north bank of the Ohio river, Portsmouth, then to Gallipolis, on the </p>	<p> OILCREEK, Ga. 1000. do. 13 to 15 yds Post Factory, per lb. 74 cents. Kentucky, do. 15 do </p>
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SNOW & AVERILL'S
ROYAL

partment was used to mean Governor and Council in a carefully worded and important rendering of the whole of the Executive and Executive Departments.

By a resolve of March 23, 1835, the Governor with the advice of Council was authorized to appoint three commissioners to the State Prison to report the best system of Prison discipline. The appointments were made and in his message of Jan., 1836, Governor Danlap says: "By referring to the proceedings of the last Legislature you will find that a Resolve was passed authorizing the Governor with the advice of Council, to appoint Commissioners to report a system of Prison Discipline for the State, &c. In conformity to the authority vested in the Executive, the report was confided to William D. Williams, Nathaniel Clark and Joseph R. Abbott, &c."

By a resolve of March 1, 1836, The Governor by advice of Council was authorized to appoint an agent to superintend the erection of an Insane Hospital under the moral direction of the Governor with the advice of Council. In his message of 1837, Governor Danlap says: "In conformity to the authority vested in the Executive, the report was confided to Daniel Williams, &c."

In all these cases the power was intrusted to the Governor and Council, and not to the Governor. The "executive" was the Governor with the advice and consent of the Council.

So Governor Kent, in his message of March 12, 1835, uses the word Executive as equivalent to and meaning Governor of Council.

But it is unnecessary to give additional citations of the use of the word Executive by all the different Governors who have been called to administer the affairs of the State.

The same word may have different meanings, and different words or forms of expression may be used to convey the same idea. The various Statutes in relation to officers appointed by the Governor with the advice and consent of the Council, enacted the early days of the government, as well as since, adopt different language to express one and the same meaning. Thus, c. 113, of the Acts of 1821, "the Governor, with the advice and consent of Council, was empowered to appoint an Agent General of Beef and Pork, to be removed at pleasure." By c. 115, they were authorized to appoint an Agent General "during pleasure." By c. 117, they were authorized to "appoint and commission" pilots, whom they might suspend or remove "at their discretion."

By c. 54, of the Acts of 1820, they were authorized to appoint a reporter "removable at the pleasure of the executive." The same Examiner is appointed by the Governor with the advice of Council and holds office by R. S., c. 47, § 51, "subject to removal at any time by the appointing power."

Forwards by R. S., c. 30, § 10, "hold their offices according to the provisions of the constitution." By R. S., c. 112, § 1, the Justices of the State Reform School are appointed by the Governor with the advice of Council, "to hold their offices during the pleasure of the Governor and Council" but not more than four years unless re-appointed.

In some instances the statute says nothing in relation to removal, but that would affect the right to remove.

Most of these offices were created at the commencement of the State government, notwithstanding this varying use of language, it was unquestionably the intention of the Legislature to place the power of removal in the Governor by the advice and consent of his Council. It was so understood by those administering the government, when the offices named and others with varying language as to removal are created, for in all instances the commissions were issued and signed, the removal officers being removable at the pleasure of the Governor and Council.

In some instances, in the different revisions of the statutes, the language as to removals has been changed from one form of expression to another, the different forms being regarded as equivalent and identical in their meaning—the revisers not being authorized to change the law.

By c. 60, of the Acts of 1831, the Governor and Council were authorized to appoint and commission fish inspectors to hold office "during the pleasure," and the first commission was issued "during the pleasure of our Governor." This, it is believed, is the only case where an appointment by the Governor and Council was made removable by the Governor.

By c. 257 of the Acts of 1824, it was enacted, "That all civil officers, appointed and commissioned by the Governor and Council, or who shall be hereafter commissioned by the Governor and Council, whose tenure of office is not otherwise provided for or limited by the constitution, shall hold and exercise their respective offices for the term of four years and no longer, unless re-appointed. Provided, however, that this act shall not be so construed as to prevent the Governor, with the advice of Council, from removing any such officers within the term of four years and this act shall not extend to such ministers of the Gospel as are or may be appointed and commissioned to solemnize marriages, or to such as are or may be commissioned by the Governor before whom certain judicial, executive and civil officers are required by law to take and subscribe the oaths or affirmations required by the constitution."

The reporter is a civil officer appointed and commissioned by the Governor and Council. His "tenure of office is not" otherwise provided for or limited by the constitution. He is therefore by the express terms of the statute to hold for four years, "unless re-appointed." He may by the provision be removed, by the Governor with the advice of the Council, and not otherwise. The statute is general and applies to all civil officers. The exceptions from this statute are specially named "the cases provided for, and limited by the constitution"—are judges whose tenure was during good behavior, to the age of seventy—Justices of the Peace, and Notaries Public for seven years if they so long behave themselves well. The act embraced within its terms, the office of reporter, who originally was "removable at the pleasure of the executive." It affords by necessary and inevitable implication the correct-

ness of the construction first given as to the removability of the reporter, for his removal within the obvious words of the act.

This act was passed in the administration of Gov. Parrie, a learned and able Judge and an incidental member of the constitutional convention. In the case of Fish Inspector—an officer appointed by the Governor with the advice of the Council, to hold at the Governor's pleasure, the commission was changed, and the appointee held his office for four years, removable at the pleasure of the Governor by the advice and consent of the Council.

This act with slight alterations by way of condensation and not intended to effect any change is found in R. S., c. 2, § 84. The original enactment was passed for the purpose of establishing uniformity in the duration of official life. It applies to all, "whose tenure of office is not otherwise provided for by law or limited by the constitution." It applies to the office of reporter equally as to other offices. There is no statute taking this office from its operation. There is no reason why there should be such a statute.

In all cases where the Governor appoints with the advice and consent of the Council, they remove. When the appointing power is in the Governor alone, he may remove.

The contemporaneous construction given to the Statute adopted and uniformly followed by the series of able and upright men, who have administered the affairs of the State, has been in accordance with law and with the undoubted intention of the Legislature. Neither negligence, ignorance nor imbecility is to be imputed to them. Indeed, as is forcibly remarked by Parker C. J., in *Packard v. Richardson*, 17 Mass. 144, "a contemporaneous is generally the best construction of a statute. It gives the sense of a community of the terms made use of by a Legislature."

If there is ambiguity in the language, the understanding and application of it, when the statute first comes into operation, sanctioned by long acquiescence on the part of the Legislature is the strongest evidence that it has been rightly explained in practice."

To the questions proposed—We answer—

1. That the reporter does not hold his office at the will and pleasure of the Governor alone, and is not removable by him.

2. That he is removable only by the Governor by and with the advice and consent of the Council.

JOHN APPLETON.
JOHN A. PETERS.
W. G. BARROWS.

We concur in the opinion that in the section of the Statute defining the tenure of office of the reporter of the decisions of the Law Court, R. S., c. 77, § 23, the words "the executive" are employed to embrace, in one general term, both the Governor and Council, who had been mentioned together in the earlier lines of the section, and to indicate the executive authority by which the appointment is made; that the phrase "who shall hold his office during the pleasure of the executive," contemplates the same mode of executive action and procedure in effecting a removal, as in making an appointment, and that neither from the letter, reason nor history of the Statute, nor from a comparison of it, with those in *part materia*, can a just inference be drawn of an intention to divide the removing from the appointing power.

We think the section substantially re-enacts, in this particular instance, the general constitutional provision that "the tenure of all offices which are not or shall not be otherwise provided for, shall be during the pleasure of the Governor and Council," and that it was never intended that the former, who has only the power to nominate for appointment, shall be able alone to create a vacancy which he has no power to fill without the action of the latter.

WM. WINT VIGGIN,
J. W. SYMONDS,
CHAS. DANFORTH.

The undersigned, Justice of the Supreme Judicial Court, having taken into consideration the question propounded to the Justices of said Court by the Executive Council of this State, and the statement of facts accompanying it: and having given them careful and mature examination, respectfully submits the following answer:

By the constitution of this State, Article 6, section 3, the Justices of said Court "shall be obliged to give their opinion upon important questions of law, and upon solemn occasions, when required by the Governor, Council, Senate or House of Representatives." The question propounded must be an important question of law, and the occasion upon which it is put must be a solemn occasion, to justify the Justices of the Court in giving an opinion. The question may be an important question of law, but if the occasion is not a solemn one within the meaning of the constitution, it should not be answered.

I respectfully submit, with great deference to the opinion of the other Justices of the Court, that the occasion upon which the question is propounded, as shown by the statement of facts, is not a solemn occasion within the true meaning of the constitution.

The object of the clause of the constitution under consideration appears to me to be to enable the Governor, Council, Senate or House of Representatives, to obtain the advice of the Justices upon any important question of law, of public concern, which the body making the inquiry has occasion to consider and act upon in the exercise of the legislative or executive powers intrusted to them respectively, for their guidance in their action.

It does not contemplate that one branch of the executive or legislative department may properly put to the Justices, questions in regard to the power of another to do an act performed by it, or as to the legal effect of such act, in the performance of which the body putting the question was not requested to act, and upon which it cannot be required to act. It cannot be that it contemplates that the Senate or House of Representatives may propound questions in regard to the power of the Governor to remove officers from office, or as to the legal effect of an attempted removal, upon which it can in no event act. Nor does it appear to me that it contemplates that the Council may require the opinion of the Justices, as to the legal effect of the action of the Governor in as-

suming to remove an officer without their consent. In doing so, he would require the Justices, the rule by which the Governor controlled in his action in which he does not require the action, without his consent, his protest. The fact that he acted alone precludes the Council from being required to join in it. It may be said that he is required to act with the Governor, a new appointment to the office should be by them must exercise their office according to the law. The attempted removal by him in no way affects their constitutional duties. It is their duty to come way on all nominations of the Governor. If one should be removed, they can easily accede to the nomination, and confirm the question of the power of the removal alone will be of no use. If they do not desire his removal, the power of the Governor move without their consent, alone to confirm, until Mr. right to the office can be confirmed by the Court. In the public interest will not suffer.

By the papers sent up it appears that Mr. Spaulding desires the Governor to remove him with the advice of the Council, and claims that he is entitled to the office exclusively; that under color of commission, and with a claim of so, he is an officer *de facto*, and by the well established rule, as the public are concerned, will be as valid and binding as in the other. *Belmont v. M. 530. Shedd's case, 123 Mass.*

There is another reason why it is one upon which the Justices are required to give their opinions. The question of law whether, by Governor, Mr. Spaulding was removed from the office of Receiver. It involves his title to the office and the officer has a right to a final judgment is proper proper process in which the will be judicially tried and determined of *quo warranto*, which out at any time by the Attorney and in it each party would be heard, and a final judgment rendered.

If the Justices should answer in the affirmative, the Governor had the power to remove him, and that Mr. Spaulding's removal, it would not be binding on him, and can have no effect to be heard in the matter, violate every principle of law to judicially determine the right to his office without giving opportunity to be heard—and is against the power of the would not be binding upon the Attorney General might the writ of *quo warranto*, a would be obliged to hear the determine the question. The Court should not prejudice a out a hearing in the proper p the occasion is so solemn as to avert some public injury.

If the Justices are obliged to question sent up, it is not p they may not be obliged to question put upon a statement of the Council, involving the title or other elective officer to be ground that if there is a vacancy the duty of the Council to Governor in filling it—and if a new mode of trying the right to his office.

The case is very similar to the Court in Massachusetts answer the questions propounded by the House of Representatives in 1 of the Justices, 123 Mass. 60.

I am, therefore, of opinion that ought not to be answered though my judgment leads to a conclusion, my confidence in its somewhat shaken by the fact of the other Justices of the different opinion. In cases may be the duty of the Council in favor of the prerogative propounding the question, of the Court in Massachusetts twice recognized this duty, under protest. 5 Met. 597. Inasmuch as any opinion I have no effect if the matter is already brought before the proper process, and let it answer. I may omit the per constitutional duty, I will express my opinion upon the matter.

I concur in the result of Chief Justice Appleton and Mr. Peters, but not in the reasons and arguments upon which they are based.

By the Constitution of this State, Section 6, "The tenure of all offices which are not or shall not be provided for shall be during the pleasure of the Governor and Council."

The office of Reporter of the Court created by Act of 1820, c. 60, § 2, which provided that the reporter be removable at the pleasure of the Governor.

This provision is substantial in the Revised Statutes. R. S. The word "executive" has its usual and recognized meaning; it is to our form of State Government the Governor as the executive, or head of the executive, the other embraces both the Council when they are required together in the execution of power, and while the Constitution, Part First, Section 1, declares supreme executive power of be vested in a Governor, it is Section 8, the words "executive" as embracing both the Council.

Considering the question in 1820 alone, the question is in sense did the Legislature "executive."

There is much in the early history of the State, and in the interpretation of the word "executive" and "are

REMOVAL.
Have removed our Stock of Goods and our
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To 100 Exchange Street.
To 100 Exchange Street.

Meat and Fish Market.
B. P. KIDDER'S,
121 1/2 Exchange St.
Tel. 100.

FORSETS.
Lose Out Your Stock
of Corsets for Sale.
To 100 Exchange Street.
To 100 Exchange Street.

W. COOMBS.
L. Raymond & Co.,
Fine St., New York.

THOMAS' ELECTRIC OIL.
To 100 Exchange Street.
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SILK UMBRELLAS.
B. A. BURR
To 100 Exchange Street.

Book and Job Printing.
To 100 Exchange Street.

PRINTING.
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3. A. BURR.
To 100 Exchange Street.

STAIRS TO CLIMB.
To 100 Exchange Street.

ROPER & NORTH AMERICAN RAILWAY.
To 100 Exchange Street.

Terrible Accident.
To 100 Exchange Street.

Real Estate.
To 100 Exchange Street.

House for Sale.
To 100 Exchange Street.

For Rent.
To 100 Exchange Street.

FOR SALE.
To 100 Exchange Street.

House to Let.
To 100 Exchange Street.

FOR SALE.
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Trade Circular.
To 100 Exchange Street.

WHOLESALE.
To 100 Exchange Street.

RETAIL.
To 100 Exchange Street.

BANGOR, MAINE.
To 100 Exchange Street.

FOR SALE.
To 100 Exchange Street.

House to Let.
To 100 Exchange Street.

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FOR SALE.
To 100 Exchange Street.

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NEW ENGLAND MUTUAL.
To 100 Exchange Street.

LIFE INSURANCE COMPANY.
To 100 Exchange Street.

AMERICAN LOAN.
To 100 Exchange Street.

TRUST COMPANY.
To 100 Exchange Street.

Capital, \$1,000,000.
To 100 Exchange Street.

DR. DYER'S.
To 100 Exchange Street.

Electro-Voltaic Appliances.
To 100 Exchange Street.

TO MEN.
To 100 Exchange Street.

ASTHMA.
To 100 Exchange Street.

CURED.
To 100 Exchange Street.

BANGOR POST OFFICE.
To 100 Exchange Street.

OFFICIALS.
To 100 Exchange Street.

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